

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Revision Application No. 135 of 2019
Syed Muhammad Meer & another v. The State & Others

Mr. Aamir Mansoob Qureshi, Advocate for the applicants.
Mr. Basam Ali Dahri, Advocate for respondent No.3.
Mr. Talib Ali Memon, APG.

ORDER

Omar Sial, J: Rubina Irfan (respondent no. 3 herein) filed a complaint in April 2018 under sections 4 and 7 of the Illegal Dispossession Act, 2005 before the learned 9th Additional District and Sessions Judge, Karachi South claiming therein that Syed Muhammad Meer and S.M. Muhammad Naheed Meer (the applicants herein) had illegally dispossessed her from her property bearing address FF-2, Block 15, Sea View Apartments, Karachi. The Meers filed an application under section 265-K Cr.P.C. before the learned trial court but the same was dismissed vide its order dated 21-8-2019. It is this order that has been impugned in these proceedings.

2. The learned counsel for the parties, as is expected, are at odds over whether the provisions of the Illegal Dispossession Act 2005 will come into play in this particular case. According to the learned counsel for the applicants, they will not, as the complaint of the respondent no. 3 is not that she was illegally dispossessed by the applicants. According to the learned counsel for the respondent no. 3, the provisions of the Act of 2005 will come into play solely on the ground that respondent no. 3 is the owner of the said flat. Indeed, it is the question of ownership of the flat which has prevailed upon the learned trial court in dismissing the section 265-K Cr.P.C. application.

3. I have heard the learned counsels for both the parties as well as the learned APG. My observations are as follows.

4. It is now well settled that the Act of 2005 will come into play when a person who is in possession of a property is illegally dispossessed from it without the due course of law having been followed. Unfortunately, this is a law which on many occasions has also been misused by litigants, especially in cases involving co-sharers, inheritance, contractual agreements etc. Often, with an aim to arm twist a legal occupant, the provisions of this law providing criminal penalties have

been invoked by unscrupulous litigants. Hence, it is necessary that appropriate care and caution is taken in examining complaints pursuant to this law.

5. In the present case it appears that the applicants have been in possession of the said flat for nearly 2 decades. Their possession of the flat is evidenced by bills, correspondence and National Identity Cards (issued on the same address) in the last two decades whereas the respondent no. 3 has nothing to show that she has been in possession. Even in the complaint filed by her there are no specifics of the dispossession mentioned. The same has remained the position even during these proceedings. To the contrary, a legal notice issued ostensibly on the directions of the respondent no. 3 on 12-2-2000, reveals that it was the applicants who have been in possession. It is also most important to mention that the respondent no. 3 filed a suit bearing number 543 of 2000 in this Court seeking a declaration that she was the owner of the subject flat. Even the plaint of this suit reflects that it has been the applicants in possession of the flat. The case was transferred to the court of the learned 10th Senior Civil Judge, Karachi South due to its pecuniary jurisdiction and re-numbered as Suit No. 1274 of 2002. The suit was dismissed vide the learned trial court's judgment dated 13.10.2004. The judgment has not been challenged on any forum and has hence attained finality.

6. In view of the above, I am of the view that the charge against the applicants is groundless and there is no possibility of their conviction. The Revision Application is allowed and the impugned order set aside. The applicants are acquitted of the charge.

JUDGE